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UNITED OF OMAHA LIFE INSURANCE COMPANY

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JENNIFER BENTLEY, as Trustee of
12 the 2001 Bentley Family Trust,

13 Plaintiff,

14 vs.

15 UNITED OF OMAHA LIFE
INSURANCE COMPANY,

16 Defendant.

Case No. 15-cv-07870-DMG (AJWx)
(Honorable Dolly M. Gee)

**DECLARATION OF VERONICA
DOUGHERTY IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

Hearing Date: March 30, 2018
Hearing Time: 10:00 a.m.
Courtroom: 8C

[Filed Concurrently With: (1) Opposition
to Motion; (2) Declaration of Nancy
Irvine; (3) Declaration of Larry M.
Golub; (4) Index of Evidence; and (5)
Proposed Order]

**EXHIBITS TO THIS
DECLARATION ARE ATTACHED
TO THE ACCOMPANYING INDEX
OF EVIDENCE**

Discovery Cut-Off: May 22, 2018
Pre-Trial Conf. Date: August 28, 2018
Trial Date: September 25, 2018

Complaint Filed: August 27, 2015

DECLARATION OF VERONICA DOUGHERTY

I, Veronica Dougherty, hereby declare as follows:

1. I am employed as a Business Systems Analyst in the Policyowner Services division of Mutual of Omaha Insurance Company (“Mutual of Omaha”). In that role, I perform services on behalf of Defendant United of Omaha Life Insurance Company (“United”), a wholly owned subsidiary of Mutual of Omaha. I have been employed by Mutual of Omaha for 38 years, all working in various positions within the Life Operations department of the Policyowner Services division. I have personal knowledge of the facts declared herein and if called upon to testify can and will testify competently thereto.

2. In my years working in Policyowner Services, I have been involved in all aspects of servicing life insurance and annuity policies from the point at which a policy has been issued until a policy is terminated by the payment of a claim or otherwise. This includes handling matters related to all forms of life insurance, including term, whole life, universal life, and other permanent life policies administered on multiple administrative computer systems. Throughout my career, I have handled elevated questions/concerns, explanation of benefits, payment histories, rate calculations, payment mode changes, policy terminations, loans, partial withdrawals, cash and loan surrenders, rider removals, ownership changes, beneficiary changes, agent changes, policy status inquiries, premium & interest payments, loan repayments, running illustrations, tax questions regarding life insurance policy gains, collateral assignments, external replacements, billing questions and refunds, process reviews and improvements, and compliance related matters

3. In preparing this declaration, I have reviewed the following materials: the two updated lists of policies produced by United (bates numbers United 1252-

1 1254) in response to Plaintiff's discovery requests, the two lists identifying the
2 beneficiaries on the updated policy lists (bates numbers United 1255-1257), the
3 correspondence between United and the 46 policyholders for the policies identified
4 on the two updated policy lists (bates numbers United 627-649, United 673-826, and
5 United 914-983), and the Business Events notes for the policies identified on the
6 two updated policy lists (bates numbers United 984-1175). Business Events notes
7 are maintained by United in a computerized database that record certain events that
8 occur in connection with a life insurance policy, such as communications with
9 policyholders (including documenting telephone calls), policy status or beneficiary
10 inquiries, premium frequency inquiries or changes, stopped payments from bank
11 accounts, cancellations, and other items. I was also the person who reviewed the
12 files for the 46 policies contained on the two policy lists to determine the number
13 (and identifying information) of beneficiaries that existed on each of those policies
14 at the time they lapsed so that this information could be supplied to Plaintiff in this
15 case. So that the analysis presented below can be easily seen, attached hereto as
16 **Exhibit 1** is a true and correct copy of the two updated lists of policies produced by
17 United (bates numbers United 1252-1254) in response to Plaintiff's discovery
18 requests, which lists are identical to those attached as Exhibit F to Plaintiff's motion.
19 For purposes of my review of the policies, I am aggregating the 45 policies issued in
20 California with the one policy issued outside California contained on the updated
21 lists and will refer to the total number of policies as 46.

22 4. In examining the lists of 46 policies, the policy files for those policies
23 and the Business Event notes for those policies, I have been able to determine the
24 following facts.

- 25 a. **Policies that Lapsed Prior to December 31, 2013.** Twenty (20)
26 policies lapsed prior to the end of 2013. These 20 policies are taken
27 directly from the policy lists provided to Plaintiff in response to
28 discovery requests and are the following:

	<u>Policy No.</u>	<u>Lapse Date</u>
1		
2	1) 8448979	07/28/2013
3	2) 5264660	12/20/2013
4	3) BU1105227	06/17/2013
5	4) BU1101313	04/28/2013
6	5) UA9179666	10/01/2013
7	6) UA7820542	12/01/2013
8	7) UR2663468	01/06/2013
9	8) UR2648669	02/07/2013
10	9) UR2627721	02/07/2013
11	10) UR2648784	01/08/2013
12	11) UR2674494	03/27/2013
13	12) UR2629776	04/02/2013
14	13) UR2671752	02/21/2013
15	14) UR2493480	12/07/2013
16	15) UR2583844	04/02/2013
17	16) UR2584816	04/06/2013
18	17) UR2681720	08/07/2013
19	18) UR2447251	02/09/2013
20	19) UR2654966	07/13/2013
21	20) UA7475318	11/01/2013

b. **Policies Failed to Reached Their Renewal Date in 2013.** Of the 19 policies listed above in subparagraph (a), eleven (11) of those policies terminated before and did not continue in force beyond the anniversary date that first occurred after January 1, 2013. These are the 11 policies, and I have listed in the last column what would have been the renewal date for each of these policies in 2013 had they not lapsed prior to that time:

	<u>Policy No.</u>	<u>Issue Date</u>	<u>Lapse Date</u>	<u>Anticipated 2013 Renewal Date</u>
1				
2				
3	1) UR2663468	12/06/2012	01/06/2013	12/06/2013
4	2) UR2648669	10/08/2012	02/07/2013	10/08/2013
5	3) UR2627721	09/07/2012	02/07/2013	09/07/2013
6	4) UR2648784	10/08/2012	01/08/2013	10/08/2013
7	5) UR2674494	11/27/2012	03/27/2013	11/27/2013
8	6) UR2629776	10/02/2012	04/02/2013	10/02/2013
9	7) UR2671752	11/21/2012	02/21/2013	11/21/2013
10	8) UR2583844	07/02/2012	04/02/2013	07/02/2013
11	9) UR2584816	07/06/2012	04/06/2013	07/06/2013
12	10) UR2681720	12/07/2012	08/07/2013	12/07/2013
13	11) UR2654966	11/02/2012	07/13/2013	11/02/2013

c. **Policy Not Issued or Delivered in California.** Of the 46 policies, one of the policies was not issued or delivered in California:

1) UA7475318

d. **Policies Where the Policyholder Asked United to Cancel the Policy.**
Of the 46 policies, there are eleven (11) policies where the policyholder specifically informed United that he or she wished to cancel the policy. Collectively attached hereto as **Exhibit 2** is a true and correct copy of communications from policyholders or Business Events notes that confirm these ten policyholders asked to have their policies cancelled. For example, for the first policy listed below (No. 5264660), the policyholder faxed United and stated: "This is to inform you that as of the date above, I am cancelling my Life Insurance Policy #5264660. Please do not deduct any more funds from my bank account (Bank of the West)." (United 715-716). The same thing happened with Policy No. BU7427273 (United 982, 1164), where the letter stated, "I would

like to cancel my insurance policy (life) # BU7427273 as of Aug. 10, 2016. Thank you for your service.” Another policyholder called United to cancel since the policyholder “has other insurance,” and United was not able to conserve (*i.e.*, retain) this policy. (No. UR2629776 (United 1081).) Yet another policyholder called United to cancel since the policy was “too expensive/can’t afford,” and United here, too, was not able to conserve this policy. (No. UR25838446 (United 1089).) Other policyholders called United to cancel the policy “due to premium increase” where the term policies had reached the end of their level guaranteed premium and the monthly premium would be increasing by seven or eight times. (No. BU1024242, increasing from \$58.74 to \$421.86 (United 1114); No. UA9227516, increasing from \$150.41 to \$1025.46 (United 1117); No. UA6883593, increasing from \$97.23 to \$789.88 (United 1126).) When a policyholder contacts United to cancel a policy, United does not refund premium, and the policy continues in force to the paid-to date, and when the policy terminates at the end of that period, United’s system codes that event as a Lapse – Non Payment of Premium, not a cancellation (again, since United does not refund any premium). Additionally, when a policyholder requests a stop of automatic premium withdrawals from his or her bank account, United cancels that payment, but the policy stays in force until the paid-to date, and United’s system codes that event as a Lapse – Non Payment of Premium at the end of that period. The 11 policies, with the specific bates number confirming the communication requesting cancellation by the policyholder, are the following, with those six (6) policies not listed in the subparagraphs above displayed in bold- faced text:

Policy No.

Documents Requesting Cancellation

1) 5264660

United 715-716

- 1 2) **9029321** **United 930, 932, 1025, 1028**
- 2 3) **BU1127633** **United 1044**
- 3 4) UA9179666 United 1055-1056
- 4 5) UR2629776 United 1081
- 5 6) UR2583844 United 1088
- 6 7) **BU1024242** **United 1114**
- 7 8) **UA9227516** **United 1117**
- 8 9) **UA6883593** **United 1126**
- 9 10) **BU7427273** **United 982, 1164**
- 10 11) UA7475318 United 983, 1168

e. **Policy Lapsed Due to Inadequate Cash Value.** Of the 46 policies, there are six (6) non-term policies where the policy lapsed because the policyholder failed to make his or her interest payment on a loan obtained against the policy's cash value and there was insufficient value in the policy to cover the monthly charges under the policy as well as the loan interest charge. Collectively attached hereto as **Exhibit 3** is a true and correct copy of communications with policyholders or Business Events notes that confirm these policyholders had a loan in place and failed to pay the interest on their loan, which caused their policies to terminate due to inadequate cash value. When such an event occurs, United's computer system categorizes this as a Lapse – Non Payment of Premium. These six policies are the following and four (4) of them (in bold-faced text) are not listed in the subparagraphs above:

<u>Policy No.</u>	<u>Documentation re Inadequate Cash Value</u>
1) 8448979	United 673, 676, 679, 985
2) 7864066	United 680, 683, 686, 989-990
3) 7997098	United 689, 693, 998-1000
4) 5554559	United 914, 916, 919, 1016

1 5) 7759088 United 920, 923, 929, 1021-1022

2 6) UA7820542 United 730, 1060

3 f. **Policies That Reached the End of their Guaranteed Level Premium**
4 **Period.** When a term policy reaches the end of its guaranteed level
5 premium period (which could be five, ten, fifteen or twenty years,
6 depending on the term policy purchased), the policy's premium
7 substantially increases (perhaps by 7 or 8 times), and it will continue to
8 increase year after year. When the point of level guaranteed premiums
9 ends, policyholders may decide to not continue the insurance coverage
10 rather than pay the increased premium. In listed those policies where the
11 insured specifically advised United that he or she wished to cancel their
12 policy. However, some policyholders may simply stop paying the
13 premiums and/or instruct their bank to stop allowing automatic
14 withdrawals from their bank account rather than paying the higher
15 premium to continue the coverage. United's computer system then
16 categorizes this as a Lapse – Non Payment of Premium. Of the 46
17 policies on the policy lists, there are eight (8) term policies that lapsed at
18 the end of their level premium term where United has not been able to
19 document a specific request to cancel, and two (2) of these policies (in
20 bold face text) are not contained in one or more of the prior
21 subparagraphs. These policies are taken directly from the policy lists
22 and are the following:

<u>Policy No.</u>	<u>Issue Date</u>	<u>Lapse Date</u>
1) BU1105227	06/17/2003	06/17/2013
2) BU1127633	01/07/2005	01/07/2015
3) BU1133356	04/14/2005	04/14/2015
4) BU1101313	04/28/2003	04/28/2013
5) BU1024242	08/12/1996	08/12/2016

1 6) UA9227516 06/01/2006 05/01/2016

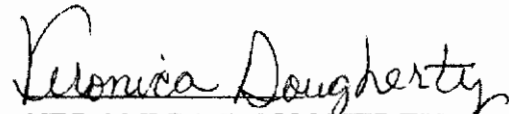
2 7) **BU1152776 07/14/2006 07/14/2016**

3 8) UA6883593 11/01/1996 10/15/2016

4 5. In reviewing the Face Amount Column of the policy lists, 21 of the 46
5 policies have face amounts of \$50,000 (or actually, \$49,725.11) or more, another 3
6 policies have face amounts at or above \$20,000, and another 12 have face amounts
7 of \$10,000 or more. Only ten of the 46 policies have a face amount less than
8 \$10,000.

9
10 I declare under penalty of perjury under the laws of the United States that the
11 foregoing statements are true and correct.

12
13 Executed on February ²²~~21~~ 2018, at Omaha, Nebraska.

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16 VERONICA DOUGHERTY
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